

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814

RH01018834

JULY 2, 2002

NOTICE OF PROPOSED REGULATION AND NOTICE OF PUBLIC HEARING
REGARDING THE WEIGHTING METHODOLOGY
FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE RATING FACTORS

SUBJECT OF HEARING

Notice is hereby given that a public hearing will be held regarding proposed changes to private passenger automobile insurance rating factor regulations found at Title 10, California Code of Regulations, Chapter 5, Subchapter 4.7, Section 2632.8.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes to adopt and amend the subject regulation pursuant to the authority vested in him by Sections 1861.02 and 1861.05 of the California Insurance Code; *Spanish Speaking Citizens Foundation Inc. v. Low* (2000) 85 Cal.App.4th 1179, 103 Cal.Rptr.2d 75; and, *CalFarm Insurance Company v. Deukemejian* (1989) 48 Cal.3d 805, 258 Cal.Rptr. 161. The purpose of this regulation is to implement, interpret, and make specific provisions of the California Insurance Code, including but not limited to Section 1861.02.

HEARING DATE AND LOCATION

The public hearing will be held to permit all interested persons the opportunity to present statements or argument, orally or in writing, with respect to the proposed regulations at the date, time, and place set forth below:

Date and Time: **September 5, 2002**
 10:00 a.m.
Location: **Hearing Room**
 45 Fremont Street, 22nd Floor
 San Francisco, CA 94105

ACCESS TO HEARING ROOM

The public hearing room is accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for the hearing in order to make special arrangements if necessary.

WRITTEN AND/OR ORAL COMMENTS; AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed regulations. Comments should be addressed to the agency contact person

Bruce Patton
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3560
Facsimile: (916) 324-1883
E-mail: pattonb@insurance.ca.gov

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be directed to:

Brian Soublet
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3521
Facsimile: (916) 324-1883
E-mail: soubletb@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written comments or materials must be received by the Insurance Commissioner, c/o the contact person at the address listed above, by not later than **5:00 p.m. on August 27, 2002**. Written comments or materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the contact person at the E-mail address listed above. The Commissioner will also accept written comments transmitted by facsimile to the contact person at the number listed above. **Comments sent to an E-mail address other than the addresses listed above will not be accepted. Comments submitted by E-mail or by facsimile are subject to the deadline for written comments set forth above.**

ADVOCACY OR WITNESS FEES

Eligible persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 California Code of Regulations, subchapter 4.5, Article 14, §2662.1 et seq., in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

Office of the Public Advisor
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3500

A copy of any written materials submitted to the Public Advisor regarding this rulemaking proceeding must also be submitted to the contact person listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Proposition 103, which was enacted by the voters on November 8, 1988, required the establishment of a new method of determining premium rates for private passenger automobile insurance. Proposition 103 mandated that premium rates must be established through the use of the following rating factors: the insured's driving safety record; the number of miles driven annually by the insured; and, the insured's number of years of driving experience. These factors are commonly referred to as the "mandatory factors." Insurers are free to use other rating factors that have been adopted by the Commissioner, by regulation, which the Commissioner has determined bear a substantial relationship to the risk of loss. The factors adopted by the Commissioner are commonly referred to as "optional factors." Insurance Code §1861.02(a), as enacted by Proposition 103, requires that the mandatory and optional factors be applied in a specific order and the Commissioner specify a weight for the factors. The existing regulations were promulgated in Department of Insurance File Nos. RH-318 (operative on September 22, 1994), and RH-338 (Sections 2632.4(a), 2632.5, 2632.7(a), (c) and (d), 2632.8, 2632.9, 2632.11(a), and 2632.15 became operative on August 5, 1996, subdivision (b) of Section 2632.7 became operative on September 11, 1996).

In determining whether the weight of the optional factors is less than the weight of the mandatory factors, for the purpose of complying with Insurance Code §1861.02(a), the existing regulations compare the average weight for all of the optional rating factors with the weight of each individual mandatory factor. Existing §2632.8 calculates the weight for all of the rating factors by a technique referred to as "the single omit method." Under this method, for every insured vehicle, and for every rating factor – looking at each factor one at a time - insurers calculate the difference between the total premium including the factor under review and the total premium without the subject factor. A large insurer using the single omit method to calculate weight is required to perform millions of calculations. Unless the Department precisely duplicates the millions of calculations required by the single omit method it is extremely difficult for the Department to determine if an insurance company is correctly complying with the auto rating factor regulations.

The proposed regulation would implement a simplified methodology to calculate the weight of the automobile rating factors. This methodology is designed to achieve the same result as the single omit method and will foster improved regulatory oversight of class plan filings by allowing the California Department of Insurance to more effectively verify that insurers have correctly assigned the weight calculation and rank order to each rating factor.

The Commissioner has determined that the amendment proposed in this rulemaking proceeding is necessary to effectively implement the auto rating factor provisions of Proposition 103. The proposed regulation sets forth amendments to the method for determining factor weights. The purpose of the proposed regulation is to implement, interpret and make specific the provisions of California Insurance Code Sections, 1861.02, and 1861.05 and to provide for an orderly insurance market.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulation does not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts from the proposed regulations for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that there will be no cost or savings to any local agency, state agency or school district from the proposed regulations, and that the proposed regulation will not affect federal funding to the State.

OTHER NONDISCRETIONARY COSTS OR SAVINGS ON LOCAL AGENCIES

None.

ECONOMIC IMPACT ON BUSINESS

The proposed regulation will have a beneficial effect businesses because it make it easier for insurers to perform the calculations required to meet the factor weight requirements than the single omit methodology required by the existing regulation.

IMPACT ON SMALL BUSINESS

The proposed regulation will not have an impact on small businesses because the insurers subject to the provisions of the regulation are not small businesses (Government Code §11342.610(b)(2)).

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY EFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The proposed regulation will not have an adverse impact on businesses, including the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESS

The proposed regulation will not cause a cost increase to private persons or businesses. To the extent that the proposed regulation makes it easier for insurers to perform the necessary weight calculations, it will have a positive cost impact.

EFFECT ON CREATION OR ELIMINATION OF CALIFORNIA JOBS, WHETHER CREATION OF NEW CALIFORNIA BUSINESSES OR WHETHER ELIMINATION OR EXPANSION OF EXISTING CALIFORNIA BUSINESSES

None.

IMPACT ON HOUSING COSTS

The matters proposed herein will not have a significant effect on housing costs.

ALTERNATIVES

On January 23, 2002, pursuant to Government Code §11346.45 (a), the Commissioner invited written public comments on three proposals (Alternatives 1, 2, and 3), which he believed would implement a simplified methodology to calculate the weight of the rating factors. The Commissioner specifically requested comments be submitted by February 25, 2002 regarding the advantages and disadvantages of each of the proposals and whether the proposals accomplished the stated goal.

Of the eleven (11) comments received by the Department, four (4) comments supported Alternative 1 (the method adopted in the proposed regulation) because they believed it is easier to use than the single omit method as well as Alternatives 2 and 3; that it would be easier to implement than the other two alternatives; and, that the results of Alternative 1 closely mimic the results of the single omit methodology. Three comments supported Alternative 2 because they believed that it produced results that were more consistent with the single omit method than the other alternatives. Alternative 3 was not favored by in any comment because of concern that this alternative would cause instability in premiums due to the erratic nature of loss cost data.

The Commissioner selected Alternative 1 because it is a viable substitute for the more labor-intensive single omit methodology. The changes proposed in Alternative 1 will enable the Department to more easily review and validate the data that is submitted by insurers in their class plan filings. Alternative 1 also reduces the burden of performing the calculations necessary to compute weight. While Alternative 2 more closely replicates the single omit method, the Commissioner rejected this alternative because it would require insurers to submit summary data, which the Department would be unable to verify. The Commissioner rejected Alternative 3 because of the concerns that it would cause instability in premiums.

The Commissioner must determine that no reasonable alternative considered or that has otherwise been identified and brought to his attention would be more effective in carrying out the purpose for which the regulations are proposed or that would be as effective or less burdensome to affected private persons than the proposed regulations.

COMPARABLE FEDERAL LAW

There are no comparable federal regulations or statutes on the specific problem addressed by the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Insurance Commissioner has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed amendments to the regulations. Upon written request, the Initial

Statement of Reasons will be made available for inspection and copying. Written requests for the Initial Statement of Reasons, or questions regarding this proceeding, should be directed to the contact persons listed above. Once the Final Statement of Reasons has been completed written requests for copies should also be directed to the contact persons listed above.

AUTOMATIC MAILING

A copy of this notice, including the Informative Digest, which contains the general substance of the proposed regulations, will automatically be sent to each person or organization on the Commissioner's mailing list.

WEBSITE POSTINGS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout format can be accessed through the Department of Insurance website at <http://www.insurance.ca.gov>. To access the documents on the Department's website: near the top of the page, locate the heading "Protecting Consumers;" scroll down to the subheading "BE INFORMED;" click on "Search for Proposed Regulations;" in the search field enter "RH01018834." You may also search for the regulations by entering California Insurance Code Section 1861.02, or search by key word ("auto rating factors" for example). Once you "Submit" your query you will be able to access the various documents related to this rulemaking proceeding.

MODIFIED LANGUAGE

If the Department further amends the proposed regulations with changes that differ but are sufficiently related to this proposed action, the full text of the amended regulations will be available to the public for at least 15 days prior to adoption.

Dated:

By: _____
Brian G. Soublet
Assistant Chief Counsel